

Court No. 2**ARMED FORCES TRIBUNAL, REGIONAL BENCH,
LUCKNOW****TRANSFERRED APPLICATION No. 32 of 2011**Wednesday, this the 3rd day of Aug 2016**Hon'ble Mr. Justice D.P. Singh, Member (J)**
Hon'ble Air Marshal Anil Chopra, Member (A)

Ex Recruit (Sepoy) Muneesh Kumar (2703603A) of the Grenadiers, Regimental Centre S/O Tej Pal Singh r/o Village Hasanpur Jarolie Post Office Hetalpur District Aligarh.

...Applicant

Ld. Counsel for the: **Shri Rohit Kumar, Advocate**
petitioner

Versus

1. Union of India through its Chief of Secretary, Ministry of Defence, South Block, Army Headquarters, New Delhi.
2. General Deepak Kapoor, Chief of the Army Staff, Army Head Quarters, New Delhi.
3. General J.J. Singh, The then Chief of the Army Staff, Army Head Quarters, New Delhi.
4. Colonel/Lieutenant Colonel, Training Battalion the Grenadiers Regimental Centre, Pin-901172, C/O 56 APO.

.....Respondents

Ld. Counsel for the : **Mrs Deepti Prasad Bajpai,**
Respondents **Central Govt Counsel, assisted by**
Col Kamal Singh, OIC Legal Cell.

ORDER (ORAL)

1. The petitioner, a recruit of the Indian Army was discharged on account of prolonged illness during course of training; feeling aggrieved he preferred Writ Petition No. 22732 of 2008 in the High Court of Judicature at Allahabad, which was transferred to this Tribunal under Section 34 of the Armed Forces Tribunal Act, 2007 and renumbered as T.A. No. 32 of 2011.
2. We have heard Ld. Counsel for the parties and perused the record.
3. The controversy in question lies within a very narrow compass. The petitioner was recruited in the Indian Army on 29.07.2005 as Infantry soldier (General Duty). During training the petitioner was granted 28 days Recruit Leave from 26.12.2005 to 22.01.2006. On account of illness, the petitioner was admitted in Military Hospital on 24.01.2006 and was diagnosed suffering from TUBERCULAL PLENEAL EFFUSION and remained admitted till 18.03.2006. Again he proceeded on sick leave on 19.03.2006 and continued till 15.04.2006. The petitioner returned back to Regimental Centre on 16.04.2006 after expiry of sick leave. However, he was re-admitted in Military Hospital on 17.04.2006 and was discharged in Shape-1 on 02.09.2006. It appears that the petitioner did not regain

health and was again re-admitted in Military Hospital on 09.09.2006 till 25.11.2006. Thus total period of absence during course of training including sick leave comes to 328 days (including 28 days Recruit Leave).

4. Subject to above back-drop, the authorities proceeded ahead in view of Army Headquarter Letter No. A/20314/MT 3 dated 28.02.1986, which provides that in case a trainee is absent on account of sickness for 210 days, then he shall be discharged. Army Order dated **28.02.1986** is reproduced as under:

*“Tele : 3018625 Directorate General Military Training
General Staff Branch
Army Headquarters
DHQ, PO : New Delhi-110011*

A/20314/MT-3 28 Feb 86

*The Commandant
(All Training Centres)*

POLICY : RELEGATION OF RECRUITS

1. *Reference the following :-*
2. (a) *Army HQ letter No 46509/Gen/MT 3 dated 21 Jan 71.*
- (b) *Army HQ letter No 46509/Gen/MT 3 dated 07 Dec 71.*
- (c) *Army HQ letter No 46509/Gen/MT 3 dated 07 Sep 72.*
- (d) *Army HQ letter No 07324/OMS-5(II) dated 24 Sep 73.*

(e) Army HQ letter No. 46509/Gen/MT 3 dated 03 Apr 82.

3. Policy letters on relegation of recruits were issued by this Headquarters from time to time. Some doubts have arisen on the existing instructions since these were issued separately over a considerable period of time. Therefore, consolidated instructions on the relegation of recruits for various reasons are outlined in the succeeding paras.

Relegation for Failure in Recruit's Test.

3. Recruits in all groups of the Army who are unable to pass the recruits test within the specified training period but are fit in all other respects for retention in the Army, will be relegated at the discretion of the Commandant of the Trg Centre, as under :-

- (a) For a maximum period of six weeks during basic military training.
- (b) For maximum period of three months during technical training.

Relegation for Absence without leave

4. A recruit who has been absent without leave for a period of 30 consecutive days during basic military training period, will be allowed to rejoin his training again. Such recruits will be discharged after necessary disciplinary action. The absence for less than 30 consecutive days may be considered for relegation, if otherwise found suitable for retention. However, once the technical training of a recruit has commenced, the discretion to discharge a recruit for such absence will be left to the Commandant of the Centre, who may retain or discharge him considering the case in its merits.

Relegation on Medical Grounds

5. *The maximum period for which a recruit can be relegated on medical grounds will be six months. A recruit falling ill due to sickness or injury during training whether attributable to or aggravated by service, on discharge from hospital maybe placed in a temporary medical category for not more than three months provided there is a reasonable purpose in the opinion of medical specialist that the individual is likely to be fit for training and the total absence from training including hospitalization period is not likely to be more than six months. If on the other hand he is unlikely to be fit for training within six months of first absence from duty due to illness, the individual will not be discharged from hospital in temporary medical category but will be invalidated out of service.*

6. *However, if a recruit is being discharged for being absent from training for more than 180 days purely on medical grounds, the period of absence may be extended to 210 days provided the recruit forgoes his annual leave of 30 days which he is entitled during recruit training. This period of annual leave will be utilized for carrying out important aspects of training missed during his absence on medical grounds.*

7. *These instructions will be incorporated in the GS publication on Basic Military Training for Recruits which is under revision at this Headquarters”*

5. Thus, it appears that discharge of applicant in pursuance to Army Headquarter letter (supra) was because of prolonged sickness and absence from military training for more than 210

days. The authorities have complied with the directions issued by the Army Headquarter (supra), hence no illegality has been committed by the Army authorities.

6. Ld. Counsel for the petitioner invited attention towards the case of Poovaiah KU who applied for voluntary discharge during course of training which was accepted, but only after a short period he again returned and his acceptance was recalled and he was restored in service and in consequence thereto he completed the training. Submission of Ld. Counsel for the petitioner is that parity should be given to the petitioner.

7. Argument advanced by Ld. Counsel for the petitioner is not sustainable for two reasons; firstly the facts and circumstances of the case of Poovaiah KU are entirely different from the present case, and secondly, even if in contravention of Army Headquarter Letter (supra) some benefit has been extended in similar situation, it shall not make out a case to provide the same relief. It is well settled law that Article 14 of the Constitution is a 'positive aspect'. Power conferred upon the Tribunal or the Court is not to perpetrate illegality, but check the illegality. One illegal act cannot be made legal by another illegal act. Whatever wrong the respondents have done in respect of one person in contravention of Army Headquarter letter (supra) shall not be treated a ground to interfere with lawful decision taken by the competent authority.

8. In any case, in the present case the petitioner was absent for 328 days, i.e. about a year during course of training. A person who is so weak and cannot face the hazards of training and became ill for 328 days, we are loath to hold that he is fit to be retained in Army service and he has been rightly discharged by the competent authority.

9. We have been informed that in the show cause notice 222 days have been mentioned as absence from duty on account of illness. Even if it is so, then no case for interference is made out with the Army Headquarter letter, quoted above, because the maximum period of 210 days is the maximum permissible limit of absence during training on the ground of medical ailment.

10. In view of what has been said above, we are of the considered opinion that the T.A. is devoid of merits and deserves to be rejected; hence **rejected**.

No order as to cost.

(Air Marshal Anil Chopra)
Member (A)

anb

(Justice D.P. Singh)
Member (J)